STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

SMYRNA EDUCATORS ASSOCIATION, DSEA/NEA,	:	
Charging Party,	:	
v.	:	U.L.P. No. 91-03-061
SMYRNA SCHOOL DISTRICT,	:	
Respondent.	:	

ORDER OF DISMISSAL

The Smyrna School District (hereinafter "District) is a public employer within the meaning of 14 Del.C. §4002(n), the Public School Employment Relations Act (Supp. 1990, hereinafter "PSERA" or "Act"). The Smryna Educators Association, DSEA/NEA (hereinafter "Association" or "SEA") is the exclusive bargaining representative of the certificated professional employees of the public school employer within the meaning of 14 Del.C. §4002(m).

The Association filed an unfair labor practice with the Public Employment Relations Board (hereinafter "PERB" or "Board") on March 27, 1991. The Charge alleges that by and through the actions of the principal of the John Bassett Moore School, the District violated §§4007 (a)(1), (a)(2) and (a)(3). These sections of the PSERA provide:

> (a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:
>
> (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

> (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
> (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

Specifically, the Charge alleges that at various times, beginning in December of 1990, and continuing to the filing of the Charge on March 27, 1991, building Principal Rennie summoned employee Pritchard and SEA Building Representative Wilson to her office, where they were ordered to discontinue the investigation of grievances under the collective bargaining agreement. On or about January 11,1991, Principal Rennie issued a letter to Ms. Wilson which the SEA alleges: (1) ordered Wilson to discontinue efforts to investigate violations of the collective bargaining agreement; (2) ordered Wilson to permit the Principal to supervise the investigation of grievances; (3) accused Wilson of unprofessional conduct because of her activities in support of the SEA; and (4) threatened Wilson with disciplinary action unless she refrained from actions in support of SEA. [Rennie's letter to Wilson is attached hereto as Exhibit 1.]

The District filed its Answer to the Charge on April 10, 1991. While essentially admitting the material facts as set forth in the Charge, the District denies that the Principal, at any time, ordered either Mr. Pritchard or Ms. Wilson to discontinue the investigation of a grievance. Rather, the District asserts that the Principal requested only that Ms. Wilson cease and desist from continuing discussions with other staff members concerning the underlying incident (which had occured in late September/ early October of 1990) and about which Ms. Wilson had advised the Principal, during a meeting between the two on December 15, 1990, there was no problem.

The Public Employment Relations Board was established for the purpose of administering the provisions of the PSERA under rules and regulations it was directed to adopt and publish. 14 Del.C. §4006 (a). Under the Rules and Regulations, so adopted

and published, Regulation 5.6, Decision or Probable Cause Determination, provides, in relevant part:

> (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4....

Authority to dismiss an unfair labor practice charge for lack of probable cause rests with the Executive Director of the PERB, subject to review by the full Board, on appeal.

As the Charging Party, the burden rests with the Association to support the alleged violations of §§4007 (a)(1), (a)(2), and (a)(3). The test previously established by the PERB for §§4007 (a)(1) and (a)(2) cases is whether the conduct reasonably tended to interfere with either the free exercise of employee rights or administration of the labor organization. Sussex Co. Vo-Tech Teachers' Assn. v. Bd. of Education, U.L.P. 88-01-021 (7/13/88), at page 297. In order for the disputed actions to rise to the level of an unfair labor practice, it must, either on its face or within the context of the surrounding circumstances, reasonably tend to interfere with employee rights or to exercise undue influence and/or coercion of employees or the Association.

It is clear from the pleadings that prior to the issuance of the January 11, 1991 letter, Building Representative Wilson had concluded and informed Principal Rennie that there was no basis for a grievance on the underlying issue. Therefore the Association's assertion that the Principal's letter constitutes an interference with the grievance procedure is without merit. Further, the timing of the discussions and the January letter is well beyond the ten day period contractually agreed upon for the timely filing of

a grievance on the underlying issue. Nor does the Complaint allege circumstances upon which one could reasonably conclude that the actions of the Principal, in handling this situation, tended to interfere with either the free exercise of employee rights or the administration of the labor organization in violation of §§4007 (a)(1) and/or (a)(2).

The Charge also alleges that the Principal's conduct constitutes discrimination by the employer with the intent of either encouraging or discouraging membership in the Association. 14 Del.C. §4007(a)(3). The pleadings do not support a probable cause determination that such a violation has occured. At issue is a dispute between the parties concerning the propriety of an employee's continuing involvement in a single incident. What makes this situation unique is that the employee involved happens to also be the Association's Building Representative.

Whether the Principal's handling of this matter violates the term(s) of the collective bargaining agreement is properly a matter for the negotiated grievance and arbitration procedure, through which this matter is currently being processed.

DECISION

For the reasons set forth above, the action(s) complained of are insufficient to support a determination that there exists probable cause to believe that 14 Del.C. §§4007 (a)(1), (a)(2) or (a)(3) were violated.

Accordingly, this unfair labor practice charge is hereby dismissed.

IT IS SO ORDERED.

D. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
Principal Assistant
Delaware Public Employment Relations Bd.

Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Delaware Public Employment Relations Bd.

ISSUED: 16 MAY 1991